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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,676	05/09/2002	Kenneth George Brash	7383-72371	6912

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FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER
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ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

MAIL DATE	DELIVERY MODE
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06/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/980,676

**Applicant(s)**

BRASH, KENNETH GEORGE

**Examiner**

Darren W. Ark

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-44 is/are pending in the application.
- 4a) Of the above claim(s) 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-37 and 40-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :3/14/02,12/27/04,1/26/06,5/09/06.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24-28, 30-37, 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smithyman 6,047,497 in view of Yates 5,904,909.

Smithyman discloses a shipping container (44a-c; see col. 4, lines 25-31 wherein it is stated that "regions 44a-44c are areas on a vehicle, such as compartments on a truck or a railroad car...can be practiced to fumigate a number of different types of regions..."), a mobile fumigation means (10) with a fumigant inlet (50a-c) coupled to the container (44a-c in Fig. 1), extraction means (52a-c), absorption means (68), but does not disclose means for washing the absorption means. Yates discloses a means for washing an absorption means (see col. 5, lines 56-end). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the fumigation apparatus of Smithyman such that it has a means for washing the absorption means in view of Yates in order to provide means for cleaning the absorption means to prevent build-up of the potentially dangerous substances on the absorption means and possible release into the ambient air.

In regard to claim 25, Smithyman discloses mobile fumigation system being defined by a shipping container (see col. 4, lines 25-31).

In regard to claim 26 and 40, Smithyman discloses the fumigation chambers being a pair of shipping containers positioned alongside one another (see Fig. 1).

In regard to claim 27, Smithyman discloses the mobile fumigation means defined by a partition wall in the shipping container, the wall separating the mobile fumigation means (10) and the fumigating chamber (44a-c; see Fig. 1).

In regard to claim 28, Smithyman and Yates disclose the absorption means comprising an absorption bed including activated carbon (see Yates col. 2, lines 54-58).

In regard to claim 30, Smithyman discloses the mobile fumigation means incorporating a source of the fumigant (10) which is directly associated with a heating source (vaporizer; see col. 5, lines 1-9), the latter used to convert the fumigant into a gaseous form.

In regard to claims 31 and 41, Smithyman discloses fumigant inlet means (50a-c) adapted to detachably couple to a mobile source of the fumigant (see Fig. 1).

In regard to claims 32 and 42, Smithyman discloses the mobile fumigation means incorporating a system control box (38) and a system of fumigant delivery pipes (40) and valves (30, 34) adapted in use to supply fumigant from a supply source(10) to the fumigation chamber (44a-c; see Fig. 1).

In regard to claims 33 and 43, Smithyman discloses the fumigant inlet means (50a-c) includes a dispersion pipe system located in the fumigation chamber (44a-c; see Fig. 1).

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In regard to claims 34 and 44, Smithyman discloses the fumigation chamber (44a-c) containing a plurality of floor and wall-mounted pipes (50a-c, 52a-c) independently connected via a system of taps and connectors to a fumigant sampling and detection meter unit (84a-c; see Fig. 1) located in a control room.

In regard to claim 35, Smithyman discloses the system control box (38) containing a fumigant sampling and detection meter unit and power supply switches for mixing fans, exhaust fan, lights, gas heaters and valve actuators (see col. 5, lines 60-67 and Fig. 1).

In regard to claims 36 and 37, Smithyman and Yates disclose the means for washing comprising a chemical solution comprising sodium thiosulphate for degrading methyl bromide (see Yates col. 2, lines 54-61 and col. 6, lines 1-7).

3. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smithyman 6,047,497 in view of Yates 5,904,909 as applied to claim 24 above, and further in view of McCurrie 1,849,194.

Smithyman and Yates do not disclose the bed or floor being configured to slide into and out of the fumigation chamber. McCurrie discloses a fumigation apparatus wherein the floor (11) slides into and out of the fumigation chamber (10; see Fig. 1 and pg. 2, lines 68-74). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the fumigation chamber of Smithyman and Yates such that it comprises a bed or floor configured to slide into and out of the fumigation chamber in view of McCurrie in order to facilitate the process of loading and unloading the fumigation chamber in order to expedite the process.

***Response to Amendment***

4. The Declaration under 37 CFR 1.132 filed 03/28/2008 is insufficient to overcome the rejection of claims 24-37 and 40-44 based upon Smithyman 6,047,497 in view of Yates 5,904,909 and further in view of McCurrie 1,849,194 as set forth in the last Office action because: applicant's assertion that "Smithyman utilizes "a fixed non-mobile installation incorporating complex pipework and flow configurations to inject an inert gas..." fails to provide evidence as to how the claims of the desired invention further define over the Smithyman and Yates patents. Applicant has not claimed further limitations with regard to the portability aspects of the desired invention and has relied upon noting the supposed shortcomings of the Smithyman patent. Furthermore, the Smithyman device is indeed portable as stated at col. 4, lines 28-31 and at col. 6, lines 14-21.

***Response to Arguments***

5. Applicant's arguments filed 03/28/2008 have been fully considered but they are not persuasive.

In regard to applicant's argument that "...the step of chemical degradation of fumigant in the present invention allows the use of a compact absorption unit...", the Examiner contends that the limitations in claim 24 fail to further distinguish over the prior art patents to Smithyman and Yates which together disclose a mobile fumigation unit that has the ability to wash the absorption means and rid it of toxic fumigants. Such a feature would be desirable to one of ordinary skill in the art since the ability of carbon to

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filter out the fumigant diminishes when it reaches its maximum capacity and thereby the carbon loses its effectiveness in performing its intended function of filtration.

In regard to applicant's argument that "Smithyman...not...suggest that the fumigation system is portable, or could be made portable...", the Examiner contends that the Smithyman patent discloses at column 6, lines 14-21 that "gas mixing system 20...is mounted on a wheeled chassis, such as a trailer, or on a vehicle, such as an automobile, a boat, or a railroad car, so that the gas mixing system 20 may be transported to different locations and connected to regions requiring fumigation. Alternatively, the gas mixing system 20 is mounted on a vehicle and supplies gaseous mixture to a region located on the vehicle itself.". Furthermore, applicant has not recited further structure regarding the feature of portability in the claims in such a manner which clearly defines over the structure of Smithyman.



***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schott et al. 6,513,282 discloses a self-contained mobile fumigation chamber system and method wherein the chamber has full transport capability and an integrated vapor recovery system for purifying chamber air following fumigation processing.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/  
Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA